Alaska Oil and Gas Association

AOGA

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Governor-Elect Mike Dunleavy:

Thank you, again, for taking the time to meet with the Board of Directors of the Alaska Oil & Gas Association (AOGA) on November 13, 2018. At that meeting, you requested a short briefing that summarizes areas that our member companies see for possible improvements to Alaska's statutes, regulations and/or processes. Our members are grateful for the opportunity to be heard. AOGA looks forward to working with you and your cabinet on these topics and others that may arise during your Administration.

As a preliminary matter, our member companies applaud the hard-working individuals that serve our State through its various agencies. None of the following should be interpreted as a criticism on their work to date. Rather, these comments are intended to identify opportunities for the state to make modifications to ensure a competitive business environment for the long-term viability of the oil and gas industry in Alaska.

General Comments

As a general matter, our members would like to see more inter-agency coordination. One example is billing for various fees and permits. Often, our members receive scattershot bills and fees, both large and small, over the course of a year, and occasionally a few years after the fact. These bills become very difficult to track, add to the burden on member personnel and are often for projects our members are not a part of. Our members respectfully recommend shifting to a comprehensive, line-item bill sent at regularly-scheduled intervals that billing personnel can plan for. Further, some land use fees have been tripled over the course of the previous year creating additional financial burdens on our members.

A second example is in various document requests and requests for responses from State agencies. Consistently, the requests fall well outside a particular agency or division's statutory and/or regulatory authority. One example is annual requirements for financial assurance documentation annually, throughout the life of a solid waste site,

despite a regulation that states such documentation is only required at the beginning of permitting or re-permitting.[1]

Additionally, state agencies with similar reporting requirements as their federal counterparts could be copied on reports sent to federal agencies instead of drafting a unique report that merely regurgitates the same information. Finally, temporary water use permitting, discussed *infra*, is currently reviewed by Department of Natural Resources (DNR), Alaska Department of Fish & Game (ADF&G), and Alaska Department of Environmental Conservation (DEC) in a process that leads to delays on time-sensitive projects. As stated earlier, better inter-agency coordination in this regard would be welcomed.

There is also an issue with high turnover within State agencies. Our members are often requested to familiarize agency personnel with our members' operations through drills, inspections and visits, only to find those people have moved on a short time later and replaced with new, unfamiliar personnel.

Alaska Department of Fish & Game (ADF&G)

Our members are in unanimous agreement that the individuals at ADF&G have done an excellent job in the timely review, revision and processing of permits. AOGA believes the current permitting system is strong. To the extent there is a need for any modifications, those changes to the permitting law should be made through the legislative and/or regulatory process.

Department of Natural Resources (DNR)

First, accolades to DNR for streamlining the leasing section within the Division of Oil & Gas (DOG). The process and procedures are much improved from years past. Additionally, the Division of Mining, Land & Water (DMLW) has addressed appeals in a timely and competent manner.

Royalty and Net Profit Share Lease (NPSL) Audits: Many of our members suffer from a back-log of royalty and NPSL audit appeals, many of which have been stuck for years, at the DNR Commissioner's Office. DOG does not generally issue the determination until six years after the royalty or NPSL payment was originally due. And then, if our member appeals the audit determination to the DNR commissioner, the appeal is stuck for years in the commissioner's office. Interest accrues on these alleged amounts owed at an annual rate of 11%, compounded quarterly, and often exceeds the value of the principal amount owed.[2] The commissioner needs to timely act upon these appeals and

[1] 18 AAC 60.210, et.seq.
[2] *See*: AS 38.05.135(d) (It is worth noting that if the final adjudication of the audit reveals a refund due to the producer, the interest would accrue against the State of Alaska.).

issue a final decision. Further, our members support a statutory or regulatory provision requiring:

(a) the DOG to issue an audit determination within [three] years of the date the payment is due;
(b) any appeal of that determination to be handled under the Department of Administration hearing system like that for the handling of Department of Revenue appeals;
(c) the hearing officer to decide any appeal within [two] years after the date an appeal is filed; and
(d) the annual interest rate be reduced to a rate consistent with current markets, e.g. tying the rate to the federal funds rate.

The North Slope has a few dozen NPSLs that were leased in the early 1980s. Under their terms, a lessee was to recover its development costs before reaching "payout" point. After that point, the lessee would pay the State a fixed percentage of the lessee's net profits in addition to a royalty. The Legislature has granted DOG the authority to modify the royalty provision of an oil and gas lease in certain circumstances to extend the economic life of leases.[3] DOG should be given the same authority to modify the net profit provision of NPSLs like the authority that already exists to modify royalties. Granting DOG the authority to modify the net profit rate merely provides a lessee the ability to submit a proposal to DOG to adjust the net profit rate to extend the economic life of a field in a mutually beneficial manner.

Permitting: While a reduction in the size of government is always a laudable goal, our members respectfully request this administration ensure that permitting agencies (e.g. DNR, DEC) supporting development are properly resourced for timely application reviews and approvals. While DNR permitting is one of the economic engines of the state, this is also important in other challenging technical areas such as air and water permits. The ability to have permits timely issued is crucial for our members' operations, many of which are currently issued in a "just-in-time" timeframe but require action be planned and completed within a very short seasonal time window.

Our members would like to build out their respective infrastructure on projects throughout Alaska in an effective and environmentally sound fashion. One opportunity to improve current infrastructure in both respects is increased permitting of permanent gravel roads instead of seasonal ice roads. Seasonal ice roads add millions in annual costs, provide only limited time windows to supply operations, increase dependence on air transport, and require repetitive annual construction programs. AOGA supports State leadership and local planning to consider and approve additional gravel roads to improve year-round access to facilities.

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[3] *See:* AS 38.05.180(j).

Additionally, temporary water use permitting could benefit from some updates. The process could be streamlined to reflect the location of the water body, the significance of the water use, and its respective impact. For example, DNR Form 102-78 could be reduced from 6 pages to 2 in cases of simple, temporary uses, as the full form calls for unnecessary information. Additionally, where water demand is of lower impact, reporting periods could be reduced to annually instead of quarterly or monthly.

Finally, DMLW's recent requirements for pollution insurance in land-related permits are an additional burden which should be reviewed for flexibility and to eliminate duplication with other ADNR bonding requirements as well as DEC financial requirements for pollution response. In general, inter-agency review and potential consolidation of such requirements would be of benefit.

Gravel Sales: Consistent with 11 AAC 71.090, DNR may consider adopting a volume-discount schedule for mining material sales. Our members have seen public sector royalty rates be uncompetitive with private sector rates. Additionally, the state may want to model a volume-discount for gravel sales similar to what is used by the Bureau of Land Management (BLM).

Invasive Species Management: Our member companies do their part to manage invasive species on their projects. In 2018, DNR formed a Dalton Highway Interagency Invasive Species Conversation Group. This group, however, does not include necessary entities that contribute to the problem, e.g. the trucking industry in Alaska. Our members would like a solution that is reasonable, effective, and more comprehensive of all responsible entities.

Department of Revenue (DOR)

Tax Credits: Our members are hoping for a prompt resolution of the litigation over disposition of tax credits. This uncertainty has chilled investment and wreaked havoc on balance sheets. Some wish to seize narrow opportunities to sell those credits.

Production Tax Audits: Our members appreciate the efforts of outgoing Commissioner Fisher and Oil & Gas Revenue Specialist Ryan Fitzpatrick regarding recent efforts to streamline the production tax audit process, but more could be done. In short, like the royalty audits before DNR, production tax audits tend to languish in the administrative appeal process. Furthermore, two fundamental changes that could be made to the process are: (1) continued efforts to resolve and make transparent audit issues using joint interest billing as the starting point for adjustments to operators within a unit, and (2) redesign of DOR's audit work papers that are produced as the basis for its adjustments as these documents are often fraught with unnecessary information and errors.

Alaska Oil & Gas Conservation Commission (AOGCC)

Industry's (and we believe AOGCC's) interests have been well served over the past couple of years by the commission's willingness to hold workshops with companies to discuss the details of proposed changes to regulations. These have been conducted in relaxed, non-contentious atmospheres where both parties can understand the other's requirements and limitations. The result has been better regulations. Further, it may be helpful to conduct additional industry-wide workshops to allow for constructive dialogue.

AOGCC is typically very responsive when an immediate operational need which is time sensitive occurs. However, we have observed the agency has struggled recently to turn around routine requests in a reasonably prompt fashion. This may point to a lack of resources.

Bonding: AOGCC recently suggested drastic changes to its bonding regulation[4] that would increase bonding requirements on current and incoming producers by orders of magnitude. The proposed regulation does not consider the financial assurances provided by these same producers under their required Dismantlement, Removal and Remediation (DR&R) agreements required by DNR. These agreements often require assurances well into the millions, far beyond the blanket bond amounts allowed under DNR's regulations.[5] AOGA provided comments at recent AOGCC hearings requesting that the new bonding amounts not be so high, not unfairly discriminate against smaller-volume and incoming producers, allow for greater flexibility in the types of financial assurances that can be provided and adopt a more holistic approach that incorporates, *inter alia*, the requirements of other agencies. To date, AOGCC has not acted upon AOGA's recommendations for a more inclusive process to address these concerns.

AOGCC lacks a modern digital map system that allows for generation and maintenance of shapefiles for display of the latest Pool boundaries and areas affected by Injection Area Orders. AOGCC may consider a system like that used by DOG to display map data.

Finally, AOGA would like to see stricter adherence by AOGCC to its memorandum of agreement (MOA) with the Environmental Protection Agency (EPA) with respect to waste determinations. AOGCC has often reached beyond its clearly defined jurisdiction and authority under the MOA to make other waste determinations not within its purview.

Department of Environmental Conservation (DEC)

Contingency Plans (C-Plans): Over time, C-Plans have become heavy documents that are hundreds of pages long. Currently Alaska is the only state that does not allow for different owners on one plan. Where it is the same emergency response team, the law

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[4] *See*: 20 AAC 25.025.
[5] *See:* 11 AAC 83.160(c).

should allow for a combined C-Plan. In general, the consolidation of plans, with page limits and reduced level of detail that can be consolidated to apply to multiple assets will not only save considerable staff time and money, but also be administered in a more effective manner. Additionally, our members report inconsistency in how DEC approves C-Plans, approving regional C-Plans for some members but requiring unique C-Plans for others.

Response Exercise Program: The guidance document put in place last year for spill response exercises has created a crippling workload for DEC and small operators by aligning with Homeland Security Exercise and Evaluation Program (HSEEP) when industry overwhelmingly requested alignment with the National Preparedness for Response Exercise Program (N-PREP) during public comment. While many operators use HSEEP voluntarily, it is very hard for a small producer to comply. It has quadrupled the workload for drill planning and required attendance not just for DEC but for other agencies who participate as well. N-PREP is manageable and comprehensive enough to ensure preparedness. Also, industry must comply with N-PREP outside of state requirements. DEC also did not address the need of requiring exercises by operator and not by response plan. This causes the same team to exercise repeatedly to meet the needs of multiple plans. Additionally, industry has several ideas regarding improvements to coordination, scheduling and timing of drills that would be more efficient and effective for all stakeholders.

Anti-degradation Regulations: Antidegradation regulations were promulgated in April 2018. These regulations established implementation methods for discharges authorized under the Clean Water Act.[6] Waters are designated into either one of three tiers or as "Outstanding National Resource Waters." "Tier 3" waters are provided the highest level of protection under the antidegradation policy due to exceptional recreational or ecological significance. Anyone can nominate a water for Tier 3 designation. Once designated a Tier 3 waterbody new or expanded discharges would not be permitted.

Currently, nominations for Tier 3 designation may be submitted directly to local legislators for consideration. The state is in the process of developing more comprehensive nomination and designation implementation methods. Because the designation authority could be one of many options, including but not limited to the legislature, the Governor, a board, or the regulatory agency, there is a great deal of uncertainty for our members navigating this framework in the future. Because Tier 3, in effect, puts many uses of designated waters completely off limits, AOGA supports a careful process to nominate and consider Tier 3 designations, with legislative approval required to ensure proper balancing of the use of State resources under Article VIII of the Alaska Constitution.

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[6] *See:* AS 46.03.010, et. seq.; 18 AAC 70, et. seq.

Air Quality Permitting: The State has, at times, not considered comments provided by Permittees during the Public Notice period for air quality permits. DEC often denies changes to draft permits requested during the public notice review and comment process without a clear basis for denying the change. DEC has also not allowed source-specific revisions to standard permit conditions even though these conditions allow for such revisions. Problems have been identified with these conditions, yet DEC limits revisions to these conditions to when they are opened for comments regarding changes to the standard conditions that apply to everyone. This does not allow for source-specific changes to occur.

Our members suggest that DEC use the existing permit as a baseline to develop a renewed permit instead of using their current template as a baseline. Often, source-specific conditions that DEC has agreed to include in the existing permit are removed or significantly revised with no basis for such changes provided by DEC as part of the public notice process. This is burdensome not only from a standpoint of review and analysis of DEC's revised condition(s), but also with respect to modification of processes and documentation used to report the permittee's annual permit compliance status.

Air Quality Policy Guidance Documents: Our members suggest development of policy guidance documents (which would be subject to public review and comments) to document decisions that concern issues that affect multiple permittees. This would result in reduced inconsistent decisions, whether real or perceived, for different permittees. Written policy guidelines would also reduce the need (and reluctance) of permittees to approach DEC with questions that deal with issues that might be common to many permittees but may not necessarily receive consistent direction from the Department.

Vague and Outdated Regulations: The vagueness of some of the regulations beginning with 18 AAC 75, et. seq. has enabled over-interpretation of those regulations. For instance, DEC needs to define the term "hazardous substance" as they do not align with the definition from EPA.

Department of Public Safety (DPS)

Fire Marshal Plan Reviews: The Department of Public Safety (DPS) often suffers from providing timely fire marshal reviews;[7] specifically, there is often a multi-week delay just to get an application reviewed. This process could be strengthened for more timely resolutions. More flexibility on the need or timing for minor updates would also be helpful.

[7] *See*: 13 AAC 50.027.

Department of Labor and Workforce Development

Relief Valve Testing: Refineries are confined by the 5-year mandate in regulations[8] under the Department of Labor and Workforce Development. For purposes of continuity and health / safety enhancement, refineries should be deemed compliant if they adhere to a robust program consistent with national standards.

Miscellaneous

Compensatory Mitigation: Compensatory mitigation is often required for Clean Water Act §404 wetlands fill permits, which in turn are required for almost all projects on the North Slope. However, the lack of availability of mitigation in Alaska has been a bottleneck for many projects. There is currently a willingness from the EPA and the US Army Corps of Engineers, who administer and permit the §404 program, to consider more flexible forms of compensatory mitigation in Alaska. One new form of flexibility we have seen is a willingness to consider a new list of public land and projects that could qualify. The State of Alaska should work with the federal government to develop a list of state land and projects that could qualify as permissible mitigation. The State should also support the chartering of additional third-party mitigation providers (mitigation banks and in lieu fee providers). These third-party providers are a critical link under federal regulations who could establish restoration projects on State or federal land, then sell "credits" to industry project applicants to meet mitigation requirements for §404 permits.

Again, congratulations on your election and we look forward to working with you and your team.

Sincerely,

Kara Moriarty
AOGA President/CEO

Peter Caltagirone, Esq.
AOGA Legal & Regulatory Affairs Manager

[8] *See*: 8 AAC 80.110.